IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all others similarly situated, Plaintiff,	)	No. 07 CV 04946
V	)	Judge Kennelly
APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation, Defendants.	)	Mag. Judge Ashman

PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANT AT&T MOBILITY LLC'S MOTION TO COMPEL ARBITRATION, AND TO AT&T MOBILITY LLC'S CITATION TO SUPPLEMENTAL AUTHORITY

NOW COMES the Plaintiff, JOSE TRUJILLO, on behalf of himself and all others similarly situated, by and through his attorneys, LARRY D. DRURY, LTD., and in supplement to his Response to Defendant AT&T Mobility LLC's (AT&T) Motion to Compel Arbitration and Dismiss, and in response to AT&T's citation to supplemental authority, the Plaintiff states as follows:

I. AT&T'S ARBITRATION AGREEMENT IS PROCEDURALLY UNCONSCIONABLE WHERE, BY ITS DESIGN, CONSUMERS WOULD HAVE INCURRED SUBSTANTIAL FEES HAD THEY NOT AGREED TO ITS TERMS

The court in *Kinkel v. Cingular Wireles LLC* held that "the issue of unconscionability should be examined with reference to all of the circumstances surrounding the transaction." 857 N.E.2d 250, 263 (2006). The *Bess II* court reinforced that mandate only a few weeks ago, where it held that "[i]n our view, under Illinois law the procedural unconscionability of an arbitration provision may be informed by the facts and circumstances surrounding the making of the contract...and questions regarding the facts and circumstances surrounding the making of that contract are relevant in determining whether the arbitration clause itself is procedurally unconscionable. *Bess v. DirecTV* ___N.E.2d___, 2008 WL 740344 at *6 (Ill.App.5 Dist., 2008).

Dockets.Justia.com

In the case at bar, the facts and circumstances surrounding Plaintiff's "agreement" to AT&T's arbitration clause *vis a vis* its *Terms of Service* demand a finding of unconscionability where Plaintiff would have been forced to pay a substantial fee to Apple Computer, Inc. (Apple) had he not agreed to AT&T's terms.

Until a consumer begins the process of activating his iPhone with AT&T, he has no knowledge of AT&T's *Terms of Service* or its arbitration clause. Therefore, a consumer must purchase the phone from Apple prior to beginning the activation process and learning of AT&T's *Terms of Service*. This poses a problem for the consumer because, as Apple admits in its response to Plaintiff's interrogatories, a consumer must remove the iPhone from its packaging, and connect it to a computer, in order to activate the iPhone. *See* Apple's Response to Plaintiff's Interrogatory #11, attached as Exhibit A. Once removed from its packaging, the consumer is charged a 10% restocking fee (which can be as high as $50.00) should he return the phone - even if the return is made within the 14 day return period. *See* Apple's Response to Plaintiff's Interrogatory #12, attached as Exhibit A.

Under these circumstances, a consumer who does not agree to AT&T's arbitration clause (which he first learns of after removing the phone from its packaging, connecting it to his computer, and beginning the activation process) is faced with a myriad of options, all of which are equally unfair and unconscionable. A consumer who does not agree to AT&T's arbitration clause may (1) not activate the iPhone with AT&T, leaving the consumer with nothing more than a useless $500.00 paperweight since AT&T and Apple have contracted to make AT&T the sole cellular service provider of the iPhone; (2) return the iPhone to Apple and pay a 10% restocking fee; or (3) be forced to agree to the *Terms of Service* and arbitration clause, and become locked into AT&T's two-year service contract, to avoid the equally unconscionable first two options. Apple and AT&T have created a process that, by design, forces the consumer to agree to AT&T's

arbitration clause, or suffer a loss, thereby depriving Plaintiff of the most sacred "meaningful choice."

Apple claims that on certain occasions it may not charge the restocking fee. *See* Apple's Response to Plaintiff's Interrogatory #12, attached as Exhibit A. Those occasions/exceptions may include, according only to Apple's Response, a situation where the consumer does not agree with AT&T's *Terms of Service.* This too is problematic because, as with the terms of the battery replacement program from which this case arises, neither Apple nor AT&T disclosed this (or any) waiver of the restocking fee to the consumer. In fact, Apple's receipt, which is the only document Plaintiff receives upon purchase of the iPhone that even remotely addresses the iPhone's return policy, states that Plaintiff will incur a "$49.90 fee if opened", even if returned by the indicated return date. *See* third column of Plaintiff's Receipt titled "Return Date", attached hereto as Exhibit B. It makes no mention of any exception, let alone a waiver of the restocking fee. Further, Apple makes no mention of any exception to the restocking fee in its *Sales & Refund Policy*; rather, Apple clearly states that "Apple **will** assess a 10% restocking fee on any opened hardware or accessory." *See* pages 19-20 of Apple's Sales & Refund Policy, attached as Exhibit C. In fact, mention of any waiver or exception to Apple's restocking fee can only be found in Apple's Response to Plaintiff's Interrogatories, and nowhere else. This begs the question: does such a waiver or exception even exist, and if it does, how could a consumer have ever known of it?

By design, AT&T's arbitration agreement is procedurally unconscionable where the process AT&T and Apple have created to activate the iPhone requires the consumer to remove it from its packaging - which immediately places the consumer under the 10% restocking fee return policy before the consumer even learns of AT&T's arbitration clause. At that crucial point in the process, a consumer is forced to either agree to AT&T's arbitration clause or pay a stiff 10%

penalty for disagreement. Such a process is grossly unfair and clearly unconscionable.

II. DEFENDANT'S RELIANCE UPON *BESS V. DIRECTV* AS AUTHORITY FOR THIS CASE IS UNFOUNDED WHERE THE FACTS OF *BESS* ARE DISTINGUISHABLE

The Defendant has filed the court's ruling in *Bess v. DirecTV,* ___N.E.2d___, 2008 WL 740344 at *6 (Ill.App.5 Dist., 2008) as supplemental authority in this case. However, the Defendant has failed to mention that the facts in *Bess* could not differ more from the facts in this case. At issue in the pending motion is the enforceability of AT&T's arbitration clause. The arbitration clause in *Bess* is in no way similar to the one at hand. In *Bess*, DirecTV's arbitration clause did not foreclose, and in fact provided for, maintenance of the suit as a class action. *Id. at *9.* In the case at bar, AT&T's arbitration provision expressly prohibits class arbitration and class actions, and forces the Plaintiff to waive his right to both a trial by jury and the right to bring his claim as a class action. Additionally, while the court found that the arbitration clause at issue in *Bess* provided for payment of all expenses that the plaintiff may incur under the rules of the American Arbitration Association, AT&T's arbitration provision calls for AT&T to pay only the costs of filing, administration, and arbitrator fees, but is conveniently silent as to expenses for travel, witnesses, and the costs for any proof produced at the request of the arbitrator.

Further, the court in *Bess* found that "[a]lthough Bess did not receive the customer agreement at the time she ordered the service, under the terms of the Customer Agreement, she was not bound by its terms until after she had read the Customer Agreement and continued to receive the service. **Accordingly, the "deactivation fee" [similar to the 'restocking fee' in the case at bar] set forth in the 2001 Customer Agreement would not have applied to Bess had she cancelled the service upon receipt of that version of the agreement.**" *Id at *7.* Unlike Bess, Plaintiff herein, under the terms of the Defendants' own return policy, would have been assessed the 10% restocking fee. This is a crucial distinguishing factor between *Bess* and the instant case, as the court in *Bess* struggled with this issue in both the majority and dissenting opinions. The majority took great care to point out that Bess would not incur any penalty for return of her satellite television equipment, indicating that this was among the deciding factors against finding it so procedurally unconscionable as to be unenforceable. *Id.* The basis for the dissenting opinion in fact was that "the Customer Agreement did not provide for the reimbursement of her equipment costs...nor is there any indication in the record that **she could have returned the equipment without incurring a penalty**." *Id. at *15-18.* Because, among other things, Bess would not incur a return penalty, the majority in *Bess* found the arbitration agreement to be enforceable but nonetheless still, to a degree, procedurally unconscionable. Here, Plaintiff would incur a return fee, and as the dissent stated in *Bess*, "this would deny [the consumer] of a meaningful choice in determining whether to accept the arbitration provision..." and would permit AT&T to "hook the consumer into using its product and then impose upon the consumer its carefully drawn contract when it is far less likely to be rejected." *Id. at *16.* The dissent even went so far as to say that under these terms, "it would be unconscionable to enforce the arbitration provision because Bess was deprived of a meaningful choice in accepting the terms of the agreement." *Id.*

Given the facts surrounding Plaintiff's "forced agreement" to AT&T's arbitration provision, and the unsavory alternatives that serve to either compel Plaintiff's agreement or punish his disagreement, AT&T's arbitration provision should be found unconscionable and its Motion to Compel Arbitration should be denied.

WHEREFORE, the Plaintiff, Jose Trujillo, individually and on behalf of all others similarly situated, hereby respectfully requests that this Court enter an order denying AT&T Mobility LLC's Motion to Compel Arbitration and Dismiss, and for such further relief as this Court deems just.

Respectfully submitted,

JOSE TRUJILLO, on behalf of himself and all others similarly situated,

By: /s/ James R. Rowe

LARRY D. DRURY
JAMES R. ROWE
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Chicago, IL 60606
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3. the iPhone User Guide posted on Apple's website;

4. the iPhone technical specifications located at www.apple.com/iphone/specs.html.

There is a direct link from Apple's general battery information page, www.apple.com/batteries, to www.apple.com/batteries/replacements.html. There is a direct link from www.apple.com/batteries/replacements.html to www.apple.com/support/iphone/service/battery.

INTERROGATORY NO. 11:

State whether or not it is possible for a consumer to activate an iPhone with AT&T Mobility, LLC, without removing the iPhone from its packaging/box? If yes, state the process for doing same.

RESPONSE TO INTERROGATORY NO. 11:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case.

Subject to and without waiving the foregoing objections, Apple responds as follows: In order to activate an iPhone, the iPhone must be connected to a computer.

INTERROGATORY NO. 12:

Does Apple charge a 10% restocking fee on iPhones returned within 14 days after purchase if the iPhone was removed from its packaging? If no, please explain Apple's return/exchange policy regarding the iPhone.

RESPONSE TO INTERROGATORY NO. 12:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: A customer who has purchased an iPhone from an Apple retail store may return it to any Apple retail store within 14 days for a refund of the original purchase price, so long as the iPhone is unopened in its original packaging. If a customer who has opened the iPhone box wishes to return the iPhone to an Apple retail store (an "open-box" return), he may do so within 14 days after purchase if the product is still in new condition. Depending on the reason for return, Apple may refund the original purchase price less a 10-percent restocking fee for open-box returns. However, there are several circumstances in which a customer may return an open-box iPhone to the Apple retail store without being assessed a restocking fee. A customer may return an iPhone within thirty (30) days without being charged a restocking fee if the customer indicates that he or she does not agree with AT&T's terms and conditions of service, is unable to qualify for a service contract with AT&T, or is unable to get acceptable cellular reception in their primary areas of use. A customer may also return an iPhone within

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thirty (30) days without being charged a restocking fee if the customer indicates that he or she does not agree to the terms of Apple's product warranty.

INTERROGATORY NO. 13:

What studies has Apple conducted regarding the lifespan and/or durability of its iPhone battery? For each such study, please identify the individual that conducted the study, when the study was commenced / completed, and the results of each study.

RESPONSE TO REQUEST FOR INTERROGATORY NO. 13:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple objects to this Interrogatory on the grounds that it fails to describe the information sought with reasonable particularity. Apple further objects to this Interrogatory on the grounds that it is vague and ambiguous as to time and in its use of the terms "studies," "durability" and "lifespan." Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to this Interrogatory to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: Apple's component suppliers test the cycle life of batteries used in the iPhone. In addition, Apple tested the batteries before the iPhone was launched and confirmed that the batteries met specification.

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Date	July 02, 2007
Customer	**jose trujillo**
Address	**, Melrose Park, 60164**
Email	joey_trujillo50@yahoo.com

Apple Store, Oakbrook

402 Oakbrook Center
Oak Brook, IL 60523
oakbrook@apple.com
630-573-7008

www.apple.com/retail/oakbrook

Receipt ID

* R 0 5 6 1 0 3 5 5 1 2 *

Product Description	Warranty	Return Date	Support Contact	Qty	Unit Price	Total
iPhone, 4GB - Part Number MA501LL/A - Serial Number YM724N1AVR0	Effective through Jun. 30, 2008	Jul. 16, 2007 $ 49.90 fee if opened	For Support, Visit: - APPLE.COM/SUPPORT	1	$ 499.00	$ 499.00

sub-total	$ 499.00
tax @7.0%	$ 34.93
	$ 533.93

Payment Method

Master Card (A)	7042	07/2008	02589B	$ 533.93

Total Tender	$ 533.93
Change Due	$ 0.00

http://www.apple.com/legal/sales_policies/retail.html
Tell us about your experience at the Apple Store. Visit www.apple.com/feedback/retail.html

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Close

Apple Store

Sales and Refund Policy

Please review these policies carefully as they are the terms of sale that govern your purchases at the Apple Store. They set out your rights and obligations with respect to your purchases, including important limitations and exclusions, such as those in Apple's product warranties. Your placement of an order at the Apple Store constitutes your agreement that these policies apply to the order, so be certain you understand them before you place your order.

To learn about Apple's return and refund policy, please click here. Please note there may be limitations on your right to return and obtain a refund for products.

Choose a topic

- Hours of Operation
- U.S. Sales Only
- Sales to End Users Only
- iPhone Sales Policies
- 1-Click®
- Electronic Software Downloads
- QuickTime Pro Keys
- Proof of Purchase
- Custom-Configured Product
- Payment Methods
- Apple Business Leases

- Sales Tax

- Tax-Exempt Orders
- Shipping Options
- Order Processing
- Prices
- Product Availability
- Product Warranty
- Apple Store Software Licenses
- Return and Refund Policy
- Defective Items
- Other Terms and Conditions

Hours of Operation

If you would like product and pricing information, the Apple Store Telesales team is available to assist you 24 hours a day, 7 days a week, at 1-800-MY-APPLE (692-7753). For order status information or other assistance with an order you have already placed with the Apple Online Store, please contact Apple Sales Support online at http://www.apple.com/support/store/ or by phone at 1-800-676-2775, Mon-Fri 5:00 a.m. – 8:00 p.m., or Sat-Sun 7:00 a.m. – 4:00 p.m. Pacific time.

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U.S. Sales Only

Click here for APO/FPO options. No shipments can be made to United States territories, or addresses outside the United States.

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Sales to End Users Only

The Apple Store sells and ships products to end user customers only. You may not purchase for resale. Apple reserves the right to refuse or cancel your order if Apple suspects you are purchasing for resale.

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iPhone Sales Policies

The purchase and use of an iPhone is subject to terms and conditions found at: http://www.apple.com/legal/sla/ and http://www.apple.com/legal/warranty/. In addition, by making this purchase, you expressly acknowledge that:

- A minimum new two-year wireless service plan with AT&T is required to activate all iPhone features, including iPod features. Wireless service for iPhone is solely provided by and is the responsibility of AT&T.
- The Apple Online and Retail Stores sell iPhone for end-user customers only. iPhone may

not be purchased for resale.

- Apple reserves the right, in its sole discretion, to refuse or cancel any order and to limit order quantity. Apple may require additional qualifying information prior to accepting or processing any order.
- iPhone may not be purchased for export outside of the United States, either directly or indirectly.
- Making unauthorized modifications to the software on an iPhone violates the iPhone software license agreement, and the inability to use iPhone due to unauthorized software modifications is not covered under warranty.

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1-Click®

1-Click is a registered service mark of Amazon.com, Inc., used under license. 1-Click is a convenient feature that allows you to purchase from the Apple Store with a single click of your mouse. You must have a valid Apple Store account to activate 1-Click features. You can activate 1-Click features once you've signed in to your Apple Store account. Once you have activated 1-Click features, simply select the products you wish to purchase and click the "Buy with 1-Click" button. When purchasing products using 1-Click, you will have 90 minutes to change items in your 1-Click order (except for Electronic Software Downloads). By activating 1-Click, you agree to all of the terms set out in these Sales and Refunds Policies. For more details about 1-Click features, please see the Apple Store Frequently Asked Questions. (You can find the Frequently Asked Questions by clicking on "Help" at the top of any Apple Store page.)

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Electronic Software Downloads

If you have an Apple Store account, you can select downloadable software products for purchase at the Apple Store. At the time of checkout, Apple will obtain an authorization from the credit card you have provided the Apple Store. Once Apple receives the credit card authorization, Apple will email you a link so you can begin downloading your software.

If the transmission is interrupted in any way during download, you can use your Apple Store account and password to begin the downloading process again. Once you complete your download, Apple will send you an email acknowledgment of your purchase.

If your credit card company does not provide Apple with a prompt authorization to charge your card, Apple will send you instructions for completing your purchase.

Please read the product information for Electronic Software Downloads and Apple's return and refund policy carefully, as software download purchases are non-refundable.

Apple will charge sales tax for downloaded software purchases if local law in the jurisdiction where you reside requires Apple to do so.

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QuickTime Pro Keys

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You can purchase a QuickTime Pro Key at the Apple Store using a valid Apple Store account. When you check out, Apple will obtain an authorization from the issuer of the credit card you provide. Once your credit card company authorizes Apple to charge your card, Apple will send an email notification that includes installation instructions and a Key code. For Key installation instructions, please see:

For Mac OS X http://www.apple.com/quicktime/upgrade/unlock-mac_osx.html

For Windows http://www.apple.com/quicktime/upgrade/unlock-win.html

If your credit card company does not provide Apple with a prompt authorization to charge your card, Apple will send you instructions for completing your purchase.

Apple will charge sales tax for QuickTime Pro Key purchases if local law in the jurisdiction where you reside requires Apple to do so.

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Proof of Purchase

Apple will send you a confirmation of your order via email if you have included an email address with your order. If you have not included an email address, you will receive a confirmation of your order by regular mail when your order is shipped.

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Custom-Configured Product

Apple offers certain products that may be custom-configured to your specifications, and Apple encourages you to review your order carefully. Since a custom-configured product is built to your specifications, the order cannot be changed, modified, or canceled once your order is in production. Please review Apple's return and refund policy carefully before ordering.

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Payment Methods

Apple allows you to make your purchases using any of the payment methods described below. You even can combine more than one payment method for a single purchase. Please read carefully our policies with respect to payment methods before you place your order.

Credit, Debit, and Check Cards

Whether you order online or phone in your order to Apple, you may pay by credit, debit, or check card. When you provide Apple with your card information, Apple will obtain a pre-approval from the card company for the amount of the order, which may result in a corresponding block on your available credit while the pre-approval remains in place. Apple will not bill your credit card or process a transaction under your debit or check card until your order ships.

The Apple Store accepts Visa, MasterCard, American Express, and Discover cards. Apple is unable to accept credit, debit, or check cards issued by banks outside of the United States.

Debit cards and check cards may have daily spending limits that could delay the processing of your order substantially.

The Apple Store requires the credit, debit, or check card security code for your card for any telephone or online purchase to protect against the unauthorized use of your credit card by other persons. The security code is an individual three- or four-digit number specific to your card that may be printed on the face of your card above the embossed account number (if American Express), or on the back of your card, on the signature panel (if Visa, MasterCard or Discover).

Apple Gift Card

You can redeem an Apple Gift Card in Apple retail stores, at the online Apple Store, or by calling 1-800-MY-APPLE. Apple Gift Cards can be used only in the United States. With an Apple Gift Card, you can purchase just about anything sold by Apple (except another Apple Gift Card, an iTunes Gift Certificate, purchases at the iTunes Music Store, or iPhoto or Aperture Photo Services products), including products from both Apple and third-party manufacturers and developers. In Apple retail stores, simply present the card to the cashier at time of payment. For purchases from the Apple Store or when calling 1-800-MY-APPLE, enter or provide the 16-digit card number and 8-digit PIN (to be scratched off). Please keep the card in your possession until Apple has delivered your order. Your use of the Apple Gift Card is subject to additional terms and conditions, as set out on the Apple Gift Card.

Financing

Qualified purchasers may finance all or a portion of their purchases with the Juniper Visa Card. For more information, click here. Not all applicants will qualify for the Juniper Visa Card.

Combining credit, debit, check, and gift cards and Apple Credit

No matter how you place your order, you may use more than one credit, debit, charge, or gift card (or combination of them) to pay for anything Apple sells, except for an Apple Gift Card, an iTunes Gift Certificate or software download such as QuickTime. You can pay with two credit cards by indicating the amount to place on your primary card. The remaining balance will be allocated automatically to the second card. You may also use up to a total of four Apple Gift Cards, by themselves or in addition to one credit card. If you are financing all or a part of your purchase through Apple Credit, you may pay with a combination of a credit, debit, or check card and what you finance through Apple Credit, or with up to four Apple Gift Cards and what you finance through Apple Credit.

Cashier's Check or Money Order

The Apple Store accepts cashier's checks and money orders as valid forms of payment. Personal or business checks are not accepted. If you wish to pay by cashier's check or money order, you may order by phone at 1-800-MY-APPLE (692-7753). The cashier's check or money order must be payable to Apple Computer, Inc. and include your web order number. Please mail your payment and a copy of your order acknowledgment to:

Apple Inc.
12545 Riata Vista Circle
MS: 198-2H50
Austin, TX 78727-6524

Apple must receive your payment within 10 calendar days or Apple will cancel your order. Please allow one business day for order processing after Apple receives your payment.

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Wire Transfer

The Apple Store accepts bank wire transfers as a valid form of payment. If you would like to use a wire transfer to pay for your order, please follow these steps:

- Contact the Apple Store at 1-800-MY-APPLE (692-7753) and place an order by phone.
- Obtain the final dollar total of your order including tax and any applicable shipping charges from the Apple Store representative.
- Have your bank electronically transfer the total dollar amount of your order.
- Reference your web order number with your payment and send to:

  Beneficiary: Apple Inc.
  Bank: Bank of America
  Routing/transit (ABA) #: 026009593
  Physical Bank Address: 100 West 33rd St, New York, NY 10001
  Account #: 3751294243

If your bank representative has questions, please ask him or her to contact a Bank of America representative for Apple's account at 1-925-675-8771. Please allow at least one business day for the processing of your wire transfer as processing time varies among banking institutions and wire transfers can be delayed due to institution policies.

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Apple Business Leases

Apple Computer offers a variety of Apple Business Lease programs through Apple Commercial

Credit. Lease terms range from 12 to 48 months.

To qualify for an Apple Business Lease, you must be an established business (corporation, partnership, or organization) with a two-year business history. If you have been in business less than two years, ask for new business leasing options when you phone in your order.

If you want to apply for an Apple Business Lease:

- Phone in your order by calling 1-800-854-3680. Your Apple Store sales representative can transfer you to an Apple Business Lease representative so you can submit your lease application. The Business Lease representative can take your application over the phone in minutes.
- Once you have submitted your proposed order and your credit application, Apple Commercial Credit will make a decision about your application within one hour.
- If Apple Commercial Credit approves your lease application, it will fax an Apple Business Lease agreement to you. Simply sign the lease agreement and return it via fax.
- When Apple Commercial Credit receives your signed lease agreement, it will submit a purchase order to Apple on behalf of your business. Please allow Apple one business day for entry of your order.
- If Apple Commercial Credit does not approve your lease application, call 1-800-854-3680 within 30 days and arrange for payment via another method. If you do not arrange for an alternate method of payment, Apple will cancel your order.

For more information on the Apple Business Lease Program and Apple Commercial Credit, visit http://www.apple.com/financing/leases/commercial/.

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Sales Tax

In addition to the price of your purchases, Apple will charge you sales tax based on your shipping address and the sales tax rate in effect at the time your order is billed. If you phone in your order, the Apple Store sales representative will provide an estimated dollar total of your order including tax and any applicable shipping charges at the time you place your order. If the sales tax rate for the state to which your order is being shipped changes before the product is shipped, the rate in effect at the time your order is invoiced will apply. The proof of purchase that Apple mails to you will include any applicable sales tax.

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Tax-Exempt Orders

If you place your order on behalf of a tax-exempt organization or individual, please call Apple Store Sales Support at 1-800-676-2775. Be prepared to provide proof of state tax-exempt status for the state where the product is being shipped. The organization or individual name on the order must exactly match the state tax-exempt certificate. Apple does not accept federal tax exemption certificates.

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Shipping Options

Apple offers four convenient shipping options.

- **Standard Shipping:** This option is free on all qualifying products. Products shipped via standard service are normally delivered within five business days after shipment.
- **2-Day Shipping:** For an additional charge, Apple offers this expedited shipping option for most products. Products shipped via two-day service prior to 5:00 p.m. EST are normally delivered by 4:30 p.m. local time two business days after shipment.
- **2-3 Day International Shipping:** For an additional charge, Apple offers this expedited shipping option on products shipped from international locations. Products shipped prior to 5:00 p.m. EST are normally delivered by 4:30 p.m. local time two to three business days after shipment.
- **Overnight Delivery:** For an additional charge, Apple offers this expedited shipping option on most of Apple's products. Products shipped prior to 5:00 p.m. EST via overnight service are normally delivered by 3:00 p.m. local time one business day after shipment. Overnight delivery is not available for orders shipping to Alaska and Hawaii.

Remember that these estimates are for time in transit only, and that they do not apply until the product leaves Apple's facilities. As the delivery of your order is beyond Apple's control once your order leaves Apple's facilities, Apple cannot assume liability for late deliveries, regardless of the delivery method you specify.

Signature is required for delivery: Most of Apple's shipments contain valuable computer equipment. If you will not be at the shipping address to accept delivery of your product, consider shipping the item to an address where someone you trust will be available to sign for your package. Please note that Apple is not able to adjust the shipping address once a package has left Apple's warehouse. Title and risk of loss to all products will pass to you on delivery. Please note that, if you are willing to assume the risks of delivering your order without a signature, you may authorize Apple to arrange for a delivery that does not require anyone to be at the delivery address. Click here for details and the applicable terms and conditions.

Undeliverable Packages: Occasionally packages are returned to Apple as undeliverable. When the carrier returns an undeliverable package to Apple, please contact Apple to make arrangements for reshipment.

Failed Delivery Attempts: Most of Apple's carriers make three attempts to deliver a package. After three delivery attempts, the carrier will return the package to Apple.

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Order Processing

The estimated shipment date on your order is based on product availability, payment processing time, and warehouse processing time and does not include transit time. Apple does not begin payment processing until Apple receives all the information that it needs and full payment or a full authorization, in the case of credit card, Apple Credit, and lease orders.

Apple will begin payment processing for orders placed on weekends or holidays on the next business day. Business days are Monday through Friday, excluding federal holidays.

Your order for in-stock items that are eligible for same-day shipping must be received before your local time of 2:00 p.m., pending payment processing, for there to be adequate remaining time in the day for your order to be dispatched.

Apple ships some products from locations outside the United States.

Overnight shipping is not available on products shipped from outside the United States.

Please review the Product Availability section below for more information regarding order processing and product availability times.

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Prices

The Apple Store endeavors to offer you competitive prices on current Apple products, selected Sale and Apple Certified Reconditioned products, and third-party products. Your total order price will include the price of the product on the day of shipping plus any applicable sales tax and shipping charges. Apple reserves the right to change prices for products displayed at the Apple Store at any time and particularly to correct pricing errors that appear on the Store.

Should Apple reduce its price on any shipped product within 14 calendar days of shipment, you may contact Apple Sales Support at 1-800-676-2775 to request a refund or credit of the difference between the price you were charged and the current selling price. To receive the refund or credit you must contact Apple within 14 calendar days of the price change.

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Product Availability

Apple makes every effort to ship your product according to the estimated lead times provided by the Apple Store at checkout. The estimated lead times are in business days (Monday through Friday, excluding federal holidays). Lead times quoted on the checkout page are for orders that are partially shipped, meaning that items ship as soon as they are available. If you have requested a complete shipment, please add three to four additional days for transportation and order consolidation processing.

Although Apple makes every effort to ship your order according to the lead-time provided, shipping dates may change due to changes in supply. If the lead-time changes, Apple will contact you via email and provide a revised shipping estimate.

Apple encourages you to contact Apple Store Sales Support at 1-800-793-9378 for order status information or visit http://www.apple.com/orderstatus.

Given the popularity of some products, Apple may restrict the number of such items that you may purchase. Apple will post limitations on quantity on the Apple Store web site or will inform you of product purchase limits at the time it processes your order. Apple reserves the right to change quantities available for purchase at any time.

Apple makes every effort to supply you with the products you order, but there may be occasions when Apple confirms orders but learns that it cannot supply the ordered products, either at all or in the quantities ordered. These occasions can include when Apple learns that the products no longer are being manufactured or they otherwise become unavailable to Apple, when Apple cannot source components for the configuration you ordered, or when there was a pricing error at the Apple Store when you ordered. In those circumstances, Apple will contact you to inform you and, if you are interested, Apple may suggest alternative products that might meet your needs. If you do not wish to order alternative products, Apple will cancel your order for products Apple cannot supply and for any other products that you no longer wish to order as a result, and will refund your purchase price for those products.

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Product Warranty

All Apple hardware products, including clearance and refurbished products, carry a one-year Limited Warranty against defects in materials and workmanship. You may review a copy of the Limited Warranty on new products, including its limitations and exclusions, before you purchase, by clicking the appropriate link below.

One-year limited warranty for new products except iPod and iSight
One-year limited warranty for iPod and iSight
One-year limited warranty for iPhone

By purchasing at the Apple Store, whether you place your order online or by telephone, you acknowledge that you have had an opportunity to review Apple's warranty terms, have done so to the degree you need to be familiar with them, and you accept their terms and conditions, including the limitations, exclusions, and disclaimers in them.

Non-Apple-branded, third-party products are, to the greatest extent permitted by law, sold "AS IS" by the Apple Store, but may be accompanied by their manufacturers' standard warranties. Apple sells "AS IS" products as is, where is, and with all faults, and without express or implied warranties from Apple. If you have questions about manufacturers' warranties that accompany such products, please see the product description page or contact Apple by writing to:

Warranty Information
Apple Inc.
1 Infinite Loop, Mail Stop 3-MAL
Cupertino, CA 95014

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Certain state laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these laws apply to you, some or all of the disclaimers, exclusions or limitations may not apply to you, and you might have additional rights.

Products sold through the Apple Store that do not bear the Apple Brand name are serviced and supported exclusively by their manufacturers in accordance with any terms and conditions packaged with the products (unless the third-party product is pre-installed in an Apple-branded computer). Apple's Limited Warranty does not apply to products that are not Apple-branded, even if packaged or sold with Apple products. Please contact the manufacturer directly for technical support and customer service.

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Apple Store Software Licenses

Your use of Apple-branded software is on the terms of the license in effect for the software at the time of purchase. You will be asked to agree to the terms of the applicable license at the time that you install the software or, if your software includes a license that you can read before you break the seal or sticker on the software media packaging, through your act of breaking the software media packaging seal or sticker. You may review examples of some of Apple's licenses, including limitations, by clicking the appropriate link below. Please be aware, however, that your purchase is subject to the particular license that accompanies the software and you must agree to the terms and conditions of that license when you install the software. That license may differ from the licenses you can review here. Be certain to read the applicable license carefully before you install the software.

Software license information

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Return and Refund Policy

If you are not satisfied with your Apple purchase of a product, please call 1-800-676-2775 for a Return Material Authorization (RMA) request within 14 calendar days of the receipt of the product. Configure-to-order, personalized or other customized products may not be returned for refund or exchange under any circumstances unless such product is Dead on Arrival (see the section below for more detailed information on such Dead on Arrival products). If the item is returnable and you send it back to us unopened in the original box, Apple will offer you a refund based on your original method of payment. You must return the product to the Apple warehouse within 14 calendar days of the issuance of the RMA. All products must be packed in the original, unmarked packaging including any accessories, manuals, documentation and registration that shipped with the product. Apple will assess a 10% restocking fee on any opened hardware or accessory. If you purchased your order using an Apple Business Lease, Apple may ask you to provide a major credit card (Visa, MasterCard, American Express, or Discover) so Apple can assess the 10% restocking fee.

Please note that Apple does not permit the return of or offer refunds for the following products:

- Product that is custom configured to your specifications, including personalized products
- Opened memory, including storage devices such as memory sticks (but excluding disc drives)
- Opened software (Note that you may return software after rejecting the licensing terms, provided the software is not installed on a computer. However, if your software includes a license that you can read before you break the seal or sticker on the software media packaging, you may not return the software once you break the software media packaging seal or sticker.)

- Electronic software downloads
- Software Up to Date Program Products (i.e., software upgrade subscription product)
- Apple Gift Cards
- Apple Gift Packaging (origami style gift box with ribbon and greeting card)
- Apple Developer Connection Products (Membership and Technical Support)

NOTE: Apple recommends that you (1) use a carrier that offers shipment tracking for all returns and (2) either insure your package for safe return to Apple or declare the full value of the shipment so that you are completely protected if the shipment is lost or damaged in transit. If you choose not to (1) use a carrier that offers tracking or (2) insure or declare the full value of the product, you will be responsible for any loss or damage to the product during shipping.

Dead On Arrival (DOA) Product: System Failure Out of the Box

An Apple-branded hardware product is considered DOA if it shows symptoms of a hardware failure, preventing basic operability, when you first use it after opening the box. If you believe that your product is DOA, please call AppleCare Technical Support at 1-800-APL-CARE (1-800-275-2273) within 30 calendar days of the invoice date. AppleCare Technical Support will determine whether the product is DOA and offer you the following options:

- **Replacement:** Apple, at its expense, will ship another of the same product . AppleCare Technical Support will put you in touch with an AppleStore Sales Support Representative who will arrange for replacement and the DOA product’s return.
- **Service:** You may have the product repaired. However, once you choose that option, you may not request replacement of the product.

If AppleCare Technical Support determines that a returned product is not DOA, Apple will apply Apple’s standard product warranty to the product. Further, if AppleCare determines that you have misrepresented a returned product’s condition and that the product is not DOA, Apple may impose a $400 handling fee.

This DOA policy applies only to Apple-branded hardware products currently offered at the Apple Store. As new products are offered, Apple reserves the right to determine whether or not this policy applies. This DOA policy does not apply to third-party products that do not bear the Apple brand name. You must call the manufacturer directly with any third-party product issues.

APO/FPO Addresses: If you're an APO/FPO customer and you're outside the domestic delivery area, the standard Apple Return and Refund Policy applies — with the exception that you're responsible for shipping the product back to a state-side return address, plus handling, customs, and inventory liability. Since you're responsible for the safe delivery of any product you're returning to Apple, we recommend that you insure it against loss.

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Defective Items

Apple Branded Products

If you discover what you believe is a product defect for any Apple-branded product, please contact AppleCare Technical Support at 1-800-APL-CARE (1-800-275-2273). If your product does have a defect, your product is covered under the terms of your product's warranty. Please refer to the warranty information and other supporting documentation that came with your product. (See the Product Warranty section below for specific information about Apple's product warranties.)

Non-Apple Branded/Third-Party Products

If you discover what you believe is a product defect for any third-party product, please contact the manufacturer of such third-party product directly for information regarding the manufacturer's warranty. Please note that products sold through the Apple Store that do not bear the Apple brand name are serviced and supported exclusively by their manufacturers in accordance with the terms and conditions packaged with the products. Apple's Limited Warranty does not apply to products that are not Apple-branded, even if packaged or sold with Apple products.

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Other Terms and Conditions

- Apple is not responsible for typographical errors. Apple reserves the right to cancel any order you have placed if there was a typographical error on the Apple Store concerning the pricing or availability of any item you ordered when you placed the order.
- Apple reserves the right to change the terms and conditions of sale at the Apple Store at any time.
- Apple may make changes to any products or services offered at the Apple Store, or to the applicable prices for any such products or services, at any time, without notice. The information provided at the Apple Store with respect to products and services may be out of date, and Apple makes no commitment to update the information provided at the Apple Store with respect to such products and services.
- Apple reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Apple Store, or to any portion of the Apple Store, for any reason; (2) to modify or change the Apple Store, or any portion of the Apple Store, and any applicable policies or terms; and (3) to interrupt the operation of the Apple Store, or any portion of the Apple Store, as necessary to perform routine or non-routine maintenance, error correction, or other changes.
- To the extent permitted by law, all sales at the Apple Store are governed by California law, without giving effect to its conflict of law provisions.
- No Apple employee or agent has the authority to vary any of the Apple Store's policies or the terms and conditions governing any sale.

- If any of the aforementioned policies are held by a court or other tribunal of competent jurisdiction to be void or unenforceable, such policy shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of the policy, so that the policies shall remain in full force and effect.
- Apple's failure to insist on or enforce strict performance of these policies shall not be construed as a waiver by Apple of any provision or any right it has to enforce these policies, nor shall any course of conduct between Apple and you or any other party be deemed to modify any provision of these policies.
- These policies shall not be interpreted or construed to confer any rights or remedies on any third parties.
- The Apple Store provides access to Apple international data and, therefore, may contain references or cross references to Apple products, programs and services that are not announced in your country. Such reference does not imply that Apple in your country intends to announce such products, programs or services.

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